IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3609 OF 2005

IN

ARBITRATION PETITION NO.341 OF 2004

Surman Investments Ltd. ...Petitioner

vs.

1. Libord Securities Ltd. & others. ... Respondents.

Mr. Gurav Kothari i/b. Ms.Nita Madhwani, for Petitioner.

Mr.H.V.Chande, for Respondent no.1.

CORAM: D.K.DESHMUKH,J.

DATED: 13th November,2006..

P.C.:-

1. This is a notice of motion taken out by the petitioner for setting aside the order passed of dismissal of the petition dated 23.8.2005 The arbitration petition filed under Section 34 of the Arbitration and Conciliation Act has been dismissed for non appearance on 23.8.2005. The sole reason given in the affidavit filed in

support of the notice of motion is that the clerk appointed by the Advocate for marking the matters on the board missed the matter and therefore, the Advocate did not remain present in the Court. The matter came up on the board for admission on 22.12.2004. Thereafter, the matter was placed on board for final hearing on 3.5.2005, 28.6.2005. On 28.6.2005 the parties mentioned the matter and got it adjourned. There is no explanation put forth as to why the Advocate who had got the matter adjourned on the earlier occasion did not make inquiry if his clerk missed the matter why the matter is not listed on the board.

2. The petition filed under Section 34 of the Arbitration and Conciliation Act has effect of preventing the Award passed by the learned Arbitrator getting converted into a decree and therefore, the petition filed under Section 34 of the Act has to be diligently prosecuted. Though the matter was dismissed on 23.8.2005, this notice of motion was taken out on 22.11.2005. No explanation is to be found as to how the petitioner become aware that the petition has been dismissed. Therefore, as the reason given for not appearing is not convincing and as the restoration of the petition will have drastic consequences in as much as the Award which has already become a decree due to operation of provisions of Section 36 of the Act, would lose that status, I asked the learned Counsel appearing for petitioner whether the petitioner agrees to deposit the awarded amount with

interest in the Court. But the learned Counsel informed me that he has instruction not to agree for the same.

3. In my opinion, considering the drastic consequences that ensue on restoration of the petition and looking to the conduct of the petitioner, it will not be in the interest of justice to restore the petition. The notice of motion is therefore, disposed of.